IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2482 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHAIKH HABIBMIYA HUSAINMIYA

Versus

TALUKA DEVELOPMENT OFFICER

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Appearance:

MR DEEPAK M SHAH for Petitioner

MR JV JAPEE for Respondent No. 1

MR NAVEEN PAHWA for Respondent No. 2

MR MUKESH PATEL for Respondent No. 3, 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/2000

ORAL JUDGEMENT

#. Challenge has been made in this petition by the petitioner, a Sarpanch of the Gram Panchayat, village Moti Vadol, Taluka: Idar, District: Sabarkantha, to the

order made under section 57(1) of the Panchayats Act under which the petitioner was ordered to be removed from the office of the Sarpanch. Challenge has also been made to the order of the Additional Development Commissioner, Gandhinagar, dated 26.2.98, under which the appeal filed by petitioner against the order of the District Panchayat Officer aforesaid came to be rejected.

#. Having heard the learned counsel for the parties and going through the special civil application as well as reply filed by the other side, I am satisfied that this petition deserves to be allowed. The first authority, i.e. the District Development Officer has not considered the order passed by the appellate committee of the District Panchayat, Sabarkantha at Himmatnagar dated 15th February, 1997. In this order, which is annexure-D to the special civil application, the appellate committee of the District Panchayat has fixed the place where the water tank is to be constructed. It is not in dispute that the water tank has been constructed at the place which is suggested by the appellate committee of the District Panchayat, Sabarkantha at Himmatnagar. This order of the appellate committee of the District Panchayat, Sabarkantha at Himmatnagar, has not been challenged. Under the show cause notice, charge is framed against the petitioner that contrary to the decision taken by the Gram Panchayat and instructions of the Taluka Panchayat, he performed foundation laying ceremony of the water tank on 21st October 1996 at the place near old well which was not the place where it is resolved to construct the water tank. This charge, no doubt, technically may be true but if we go by the judgment of the Appellate Committee, District Panchayat, this place has been changed and the place where foundation laying ceremony was done by the petitioner is the place which is fixed by the appellate committee of the District Panchayat for construction of water tank. This aspect has not been considered by the District Development Officer and has given show cause notice to the petitioner in ignorance thereof.

#. So far as second charge is concerned, it is true that encroachment has not been removed but it is equally true whether the petitioner can be blamed for this encroachment? I find from the record of this special civil application that this encroachment appears to have been made by the concerned person about fifteen years back and at that time the petitioner was not the Sarpanch. I do not find anything on the record of the special civil application where the Panchayat has resolved to remove this encroachment. It is also not the

case where the Taluka Panchayat or the District Panchayat have asked the petitioner to remove encroachment.

#. In these facts, for non removal of this encroachment, the petitioner could be held responsible and that too, to the extent where he has to be removed from the office of the Sarpanch. Not only this, if we go by these two charges, in fact and substance, the first charge is ancillary to charge No.1. It appears to be a political dispute amongst the members of the Gram Panchayat regarding place where water tank has to be constructed. The charge No.3 is also ancillary to charge No.1 and 2. In substance, charge is only that he has laid down foundation stone for construction of tank at a place which was not approved by the Gram Panchayat as well as Taluka Panchayat, but after the decision of the appellate committee in the District Panchayat, this charge could not be made a ground for removing the petitioner from the office of the Sarpanch. This all has been done only after the decision of the appellate committee in the District Panchayat. Removal of elected member of the Gram Panchayat, herein a Sarpanch, is a very serious matter. Ours is a democratic country and where people's representative has to be removed from the office, all care and precautions are to be taken. This has not been done in the present case. It is unfortunate that District Development Officer has not noticed the judgment of the appellate committee of the District Panchayat. He may not be a party to the decision but nevertheless decision of the appellate committee, which is very relevant and material evidence in the present case, and not only the decision is given in ignorance of the same but the District Development Officer has gone to the extent of removing the petitioner from the office of the Sarpanch of Gram Panchayat. The order cannot be allowed to stand.

#. In the result, this special civil application succeeds and the same is allowed. Both the orders impugned in this special civil application, i.e. of the District Development Officer, Himmatnagar, dated 29.11.97, and that of the Addl. Development Commissioner, Gujarat State, Gandhinagar, dated 26.2.98, are quashed and set aside. Rule is made absolute. No order as to costs.

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(sunil)